

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SWINOMISH INDIAN TRIBAL  
COMMUNITY, a federally recognized Indian  
Tribe,

Plaintiff,

v.

BNSF RAILWAY COMPANY, a Delaware  
corporation,

Defendant.

NO. 2:15-cv-00543-RSL

**DECLARATION OF  
CHRISTOPHER I. BRAIN  
REGARDING ADDITIONAL  
SUMMARY JUDGMENT EXHIBITS**

I, Christopher I. Brain, declare as follows:

1. I am a member of Tousley Brain Stephens PLLC, attorneys of record for Plaintiff Swinomish Indian Tribal Community, am competent to testify and make this declaration based upon my personal knowledge.

2. Attached hereto as Exhibit 45 is a true and correct copy of the May 9, 1914 letter from E. B. Meritt, Assistant Commissioner of the Department of Interior Office of Indian Affairs. We have not been able to locate the April 27, 1914 letter addressed therein or other documents related to the incident, but the letter certainly addresses damage done by the railroad to "certain Indian lands within the Swinomish Reservation..."

3. Attached hereto as Exhibit 46 is a true and correct copy of the January 15, 1935 letter from the Great Northern Railway Company to the Commissioner of Indian Affairs. Again, we cannot locate referenced or related documents but the letter clearly references request for information about a right of way and whether a portion traverses Indian lands.

4. Attached hereto as Exhibit 47 is a true and correct copy of a June 9, 1970 letter from Harwood Bannister, counsel for the Swinomish Bribe, to the Burlington Northern Railway and asserting that it may be “trespassers on the property.”

5. Attached hereto as Exhibit 48 is a true and correct copy of the Memorandum and Authorities in Opposition to the Interstate Commerce Commission's Motions to Intervene and Dismiss.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

DATED this 24th day of August, 2016.

TOUSLEY BRAIN STEPHENS PLLC

By: /s/ Christopher I. Brain

Christopher I. Brain, WSBA #5054

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 24, 2016, I electronically filed the foregoing with the  
3 Clerk of the Court using the CM/ECF system which will send notification of such filing all  
4 counsel of record.

5 DATED at Seattle, Washington, this 24th day of August, 2016.

6  
7 /s/ Christopher I. Brain

8 Christopher I. Brain, WSBA #5054

9 cbrain@tousley.com

10 Attorneys for Plaintiff

11 TOUSLEY BRAIN STEPHENS PLLC

12 1700 Seventh Avenue, Suite 2200

13 Seattle, Washington 98101

14 Tel: 206.682.5600

15 Fax: 206.682.2992

16 5973/001/351014.1